

annual revenues in the applicable Fiscal Year over \$20 billion, then the other parent shall have the right, by notice to the acquiring parent within 30 days of its becoming aware thereof, to elect to cause a dissolution of the Newco Group. Any such dissolution shall be completed as soon as practicable but in any event within two years following the date of such notice. The provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 11.5(c)(iii).

11.6 Ancillary Non-Compete. Since the Technology Unit will be engaging in architectural design and since technology, know-how, other Intellectual Property Rights and confidential information will be provided to, or developed by, for, or in conjunction with, the Technology Unit for use in connection with the Venture Business, each parent agrees in principle that as long as it, directly or indirectly, owns a substantial interest in the Newco Group, it will not seek to undermine fundamentally the technology architecture of the Newco Group for the Venture Business, all as more specifically set forth in, and subject to the terms of, the IPR Agreement. Accordingly, consistent with the foregoing, except as specifically provided herein, from the Closing, and so long as this Agreement and the other Transaction Agreements remain in effect, each parent shall not, and shall undertake to ensure that none of its Group Companies shall, directly or indirectly, acting alone or in association with, or through, one or more Persons, or through Domestic Network Facilities in which any of the foregoing has ownership or operation rights, (a) engage in any of the activities described in Section 11.1 in the other parent's Home Territory (but in such event, subject to the exception set forth in Section 11.4), or (b) compete

with the other parent or any other Distributor of the Newco Group in the other parent's Home Territory as a distributor of Communications Services of the type provided by the Newco Group (subject to passive sales requirements under Applicable Law) or as a supplier of Communications Services of the type supplied by the Newco Group.

**11.7 Exceptions to Ancillary Non-Compete and Other Non-Compete Provisions.**

(a) Notwithstanding the provisions of clause (b) of the second sentence of Section 11.6 and of Sections 11.12 and 11.13, either parent and its Group Companies may, in the other parent's Home Territory, make any investment in a Person which breaches clause (b) of the second sentence of Section 11.6 or Section 11.12 or 11.13, so long as (i) such investment represents less than 20% of the equity interests of such Person and the investment or related series of investments made or committed in connection therewith does not exceed \$200 million; provided, that, the aggregate initial value of all such investments does not exceed \$1 billion in the aggregate, or (ii) the aggregate annual revenues derived by any such Person in the other parent's Home Territory from any investment or related series of investments that violate clause (b) of the second sentence of Section 11.6 or Section 11.12 or 11.13 do not exceed \$200 million, or taken together with all such other investments, \$1 billion in the aggregate.

(b) If a parent or any of its Group Companies engages in an Acquisition Transaction or Business Combination in its Home Country involving a Specified Person as provided in Section 11.2 and such Specified Person, directly or

indirectly, has investments in or derives revenues from the other parent's Home Country that would breach clause (b) of the second sentence of Section 11.6 or Section 11.12 or 11.13, then such investments and revenues shall be aggregated with all other direct or indirect investments in, or revenues derived from, as applicable, the other parent's Home Country that would breach clause (b) of the second sentence of Section 11.6 or Section 11.12 or 11.13 in determining whether the limitations set forth in clauses (i) and (ii), respectively, of Section 11.7(a) are met.

**11.8 Exceptions and Restrictions Applied Independently.** The permitted exceptions for breaches of the Non-Competition Undertakings apply independently. If an investment in any Person breaches both one or more subsections of Section 11.1 and one or more subsections of the second sentence of Section 11.6 or Section 11.12 or 11.13 and is entitled to a permitted exception for a breach of one or more subsections of one Section and not the others, such permitted exception will not excuse the breach of such other subsections. Unless an applicable permitted exception can be relied upon to excuse such breach, the party in breach must, subject to the terms and conditions hereof, cure the breach and bring itself or the relevant other Person into compliance. The permitted exceptions in Sections 11.3, 11.4, 11.5 and 11.7 apply and may be utilized with respect to the revenues derived from activities in the respective territories set forth in each such Section, notwithstanding the fact that a single Person may derive revenues from activities in more than one of such territories; provided, that any revenues derived from activities in any other territory must independently comply with Section 11.1 and the second sentence of Section 11.6 and Sections 11.12 and 11.13.

11.9 Determinations of Revenue. For the purposes of Section 11.3, 11.4, 11.5 and the second sentence of Section 11.6, a Person shall be deemed to undertake, engage in, own or operate a business, as the case may be, in any territory subject to such Section in which it derives any revenue during the last full fiscal year of such Person prior to the time the determination is made.

11.10 Calculation of Damages; Cure Period; Notice. For purposes of calculating damages and similar remedies, the breach of any provision of this Article 11 shall be deemed to have commenced upon the occurrence of the event resulting in the breach, notwithstanding that any applicable cure period may not then have expired; provided, that, if a breach of any provision of this Article 11 exists as of the Closing Date, such breach shall be deemed to have commenced as of the Closing Date. No parent shall be entitled to injunctive relief or any similar remedy for any breach of any provision of this Article 11 until the expiration of the one year period from the time the parent seeking relief shall have given notice to the other parent of the occurrence of the event resulting in the breach (it being agreed that the foregoing period may run concurrently with any cure period set forth in this Article 11). Each parent shall use its good faith efforts to notify the other upon actually becoming aware of any events that would constitute a breach by the other parent of this Article 11.

11.11 Exclusions. The following activities and Persons shall be excluded from the application of the Non-Competition Undertakings and Sections 11.12 and 11.13:

- (a) Multimedia Content;
- (b) Broadcast Services;
- (c) Systems Integration; provided, that the parents in their respective Home Territories and the Newco Group in the RoW shall be the preferred supplier of Communications Services and Outsourcing Services therefor;
- (d) membership in any satellite consortia as of the date hereof and successor interests therein;
- (e) international roaming agreements;
- (f) all non-wholly-owned equity or other non-wholly-owned investments and joint ventures held as of the date hereof and those for which definitive agreements have been concluded as of the date hereof set forth on Schedule 11.11(f)A in the case of AT&T and Schedule 11.11(f)B in the case of BT, as well as all current and any future Subsidiaries of the joint ventures and investments identified on Schedule 11.11(f)A and Schedule 11.11(f)B (it being agreed that such Schedule 11.11(f)A and Schedule 11.11(f)B may be amended or supplemented on or prior to December 31, 1998 to reflect errors and omissions, if any, reflecting non-wholly-owned equity or other non-wholly-owned investments held as of the date hereof);
- (g) all joint research and development initiatives existing as of the date hereof;

- (h) run off of customer agreements existing at the time of the acquisition of an interest in a Person that is a party thereto that were not entered into in contemplation of an investment in a parent's Home Country; otherwise, after a one year period, the economic benefit and risk of such agreements will be held, in accordance with Section 7.6, for the account of the applicable Newco Subsidiary;
- (i) maintenance and operation of legacy systems;
- (j) the activities of AT&T listed on Schedule 18.9;
- (k) servicing of contracts for which consents are not obtained;
- (l) supporting but not selling other vendors' services;
- (m) investments made by employee benefit plans of either parent and its Group Companies;
- (n) investments actually made by AT&T or BT or any of their respective Group Companies in conjunction with the other parent or any of its Affiliates with respect to any of the investment opportunities set forth in Schedule 26.1;
- (o) investments actually made by the investment fund established pursuant to the Investment Fund Agreement in accordance with the terms thereof;
- (p) Satellite & Radio Services;
- (q) agreements of AT&T set forth in Schedule 7.2(c); and
- (r) AT&T's existing reseller agreements.

**11.12 Certain Sales Practices, Outsourcing Services, Outsourcing Professional Services; Resellers.**

(a) Nothing in this Article 11 shall prohibit the activities contemplated by the last sentence of Section 2.1(a) or the provision of any Outsourcing Services to the extent expressly permitted by Section 7.3; provided, however, that, in order to enhance the business of the Newco Group, except as expressly set forth in Section 7.3 and except as permitted in Section 11.7, when such parent is no longer subject to clause (b) of the second sentence of Section 11.6, neither parent nor any of its Group Companies will directly or indirectly engage in any Outsourcing Professional Services principally targeted or provided to businesses in the other parent's Home Territory.

(b) The provisions of Article 11 shall not apply to agreements between the parents or their Affiliates and resellers, so long as the parents and their Affiliates are not pursuing reselling (i) for the express purpose of marketing to Qualifying MNC Customers or (ii) deliberately to target Qualifying MNC Customers.

**11.13 Non-Exclusive Content Services.** Notwithstanding the provisions of this Article 11, either parent and its Group Companies shall be entitled to offer, sell or distribute Non-Exclusive Content Services; provided, however, that, in order to enhance the business of the Newco Group, except as permitted in Section 11.7, unless such parent is no longer subject to clause (b) of the second sentence of Section 11.6, no parent or its Group Companies may offer, sell or distribute Special Content Services in the other parent's Home Territory.

11.14 Preexisting Non-Competition Obligations. Schedule 11.14A and Schedule 11.14B set forth the non-competition obligations by which BT or AT&T or any of their Group Companies, respectively, is bound as of the date hereof and the activities which, if engaged in by the Newco Group, would violate such non-competition obligations. The Newco Group shall not undertake any of the activities set forth on Schedule 11.14A or Schedule 11.14B, directly or indirectly, whether acting alone or in association with, or through, one or more Persons, without the prior written consent of the parent or the parent of the Group Company that is subject to the non-competition obligation.

11.15 Unintentional Non-Conformance. Notwithstanding anything to the contrary in this Article 11, neither parent nor any of its Group Companies shall be in breach of its undertakings in this Article 11 to the extent that such breach shall result from the activities by a Person owned by any third Person, if such parent owns less than 20% of the equity interests of such third Person and such third Person owns less than 20% of the equity interests of the Person engaging in the activities that would otherwise breach this Article 11; provided, that the aggregate annual revenues of the applicable parent derived from all such activities, calculated on a Pro Rata Basis, shall not exceed \$25 million.

11.16 Cost of Living Adjustment. Each of the Dollar amounts set forth in this Article 11 shall be increased on and as of each anniversary of the Closing Date by a percentage equal to the higher of (a) the percentage increase, if any, in the Consumer Price Index for the month in which the applicable anniversary occurs compared to the Consumer Price Index for the month in which the Closing occurs or



the most recent preceding anniversary thereof, as applicable, and (b) the percentage increase, if any, in the Retail Price Index for the month in which the applicable anniversary occurs compared to the Retail Price Index for the month in which the Closing occurs or the most recent preceding anniversary thereof, as applicable.

**“Consumer Price Index”** shall mean the Consumer Price Index for all Urban Consumers U.S. City Average, All Items (1982-84=100), published by the Bureau of Labor Statistics of the United States Department of Labor, or any successor index thereto, appropriately adjusted; provided, that, if there shall be no successor index, a substitute index with respect to the United States shall be selected by the parents.

**“Retail Price Index”** shall mean the General Index of Retail Prices published by the Office for National Statistics of the U.K., or any successor index thereto, appropriately adjusted; provided, that, if there shall be no successor index, a substitute index with respect to the U.K. shall be selected by the parents. Such adjustment shall be calculated by the Independent Auditor and reported to the parents no later than 30 days following the date upon which the Consumer Price Index and Retail Price Index information for the latest applicable month is available.

11.17 **Enforcement.** The parties expressly agree and acknowledge that each parent shall be entitled, directly and on its own behalf, (a) to enforce any of the provisions of this Article 11 and to seek any remedies provided in this Agreement, or otherwise available by law, for the violation of such provisions both on behalf of itself and on behalf of Thistle BV, and (b) to claim its pro rata share of any harm to the Newco Group caused by the breach by the other parent or its Group Companies of this Article 11, notwithstanding that the harm resulting from any such breach is only

to the Newco Group or the Venture Business, and Thistle BV shall not be entitled to any duplicative recovery for the same breach.

11.18 Farland.

(a) For a period of two years following the Closing, the provisions of Article 11 shall not apply to (i) BT's equity interests in Farland B.V., a *Besloten Vennootschap* organized under the law of The Netherlands ("Farland"), or (ii) BT's indirect interest in any Assets or Subsidiaries of Farland.

(b) On or prior to the second anniversary of the Closing, BT will offer to sell to Thistle BV or its designee, in one or more transactions, and on customary terms and conditions, an aggregate of approximately 30% of the then outstanding equity of Farland or the ultimate parent of Farland (the "Farland Equity Stake"). Any such decision by Thistle BV to purchase an equity interest in Farland shall be made by the Class A Representatives only, with no other vote of any other Representative being required.

(c) If BT and Thistle BV cannot agree on the sale price for the Farland Equity Stake, the sale price will be determined by reference to the appraisal procedures set forth in Annex 2.

(d) Notwithstanding Section 11.18(b), from and after the second anniversary of the Closing, BT will own, directly or indirectly, not more than 25% of the equity interests in Farland or the Farland Equity Stake.

## ARTICLE 12

### RESTRICTIONS ON TRANSFER

#### 12.1 General Prohibition.

(a) After the Closing Date, except as provided in Section 12.2, 12.3, 23.3 or 23.4, (i) neither the AT&T Parties nor the BT Parties shall directly or indirectly sell, transfer, assign, charge, mortgage, hypothecate, pledge, encumber, grant a security interest in, grant any right or option or create any convertible, exchangeable or derivative security with respect to, grant any limited right (*beperkt recht*) with respect to, issue any depositary receipts for, or otherwise dispose of (whether by operation of law or otherwise) (each, a "Transfer") any of their shares or other equity interests in Thistle BV (but in the case of Thistle BV, subject to Section 12.3), DirectorCo, the Newco Services Company or any of the Newco Subsidiaries and, in the case of AT&T or BT, any of its shares in VLT or BT Holdings (but in the case of BT Holdings, subject to Section 12.3), respectively, or with respect to any of the foregoing, any rights or interests therein or thereto or in the proceeds thereof, and (ii) Thistle BV shall not, and shall cause the other members of the Newco Group not to, and VLT and BT Holdings, in their capacity as shareholders of Thistle BV, shall cause Thistle BV and the other members of the Newco Group not to, and the parents shall cause their direct and indirect Subsidiaries and Affiliates that are shareholders or members of the Newco Subsidiaries not to, Transfer any shares or other equity interests in any member of the Newco Group or any rights or interests therein or thereto or in the proceeds thereof to any third party; provided, however, that notwithstanding the foregoing, the provisions of this

Section 12.1 shall not prohibit any Business Combination or Change of Control involving, or sale or other Transfer of, any of the Voting Securities of a parent.

(b) Any attempt to Transfer any shares or other equity interests in Thistle BV, DirectorCo, the Newco Services Company, the Newco Subsidiaries, VLT or BT Holdings or any rights or interests therein or thereto or in the proceeds thereof, in violation of this Article 12 shall be null and void *ab initio*, and Thistle BV shall not, and the parties shall cause DirectorCo, the Newco Services Company, the Newco Subsidiaries, VLT and BT Holdings not to, register or recognize any such Transfer.

12.2 Permitted Transfers. Subject to Section 12.4, either parent may, with the prior written consent of the other parent, which consent shall not be unreasonably withheld or delayed, cause the shares or other equity interests in VLT, BT Holdings, Thistle BV, DirectorCo, the Newco Services Company or any of the Newco Subsidiaries held by it or one of its Subsidiaries or Affiliates to be transferred to a direct or indirect wholly-owned Subsidiary of such parent; provided, that, (i) the transferring parent confirms in writing that it remains obligated to perform the obligations contemplated to be performed by it pursuant to this Agreement and the other Transaction Agreements; (ii) such transferee shall have agreed in writing to be bound by the terms and conditions of this Agreement and, to the extent applicable, the other Transaction Agreements; (iii) the Transfer complies in all respects with the provisions of this Agreement and the applicable Charter Documents or constitutive documents of the Newco Subsidiaries; and (iv) the transferee shall have agreed in writing to re-Transfer such shares or equity interests in Thistle BV, DirectorCo, the Newco Services Company or the Newco Subsidiary to the transferring parent or one

of its other wholly-owned Subsidiaries if it no longer qualifies as a wholly-owned Subsidiary of the transferring parent.

**12.3 Transfer of BT Holdings and Thistle BV Shares.**

(a) The prohibition on the Transfer of any shares in BT Holdings or Thistle BV shall apply for a period commencing on the Closing Date and ending on the 10th anniversary thereof.

(b) If, on or prior to the 10th anniversary of the Closing Date, Netherlands counsel mutually acceptable to the parents confirms to the parties that an extension of the prohibition on the Transfer of shares in BT Holdings or Thistle BV will not be enforceable under Netherlands laws, VLT and BT Holdings may Transfer any or all of their direct shares in Thistle BV and BT may Transfer any or all of its shares in BT Holdings; provided, that, if any such party does so Transfer any or all of its shares in Thistle BV or BT Holdings, (i) it shall be required concurrently to Transfer all of its equity interests in DirectorCo to the other parent; (ii) the transferee may not be, or be a Group Company of, a Major Competitor of the other parent; (iii) the transferee shall have agreed in writing to be bound by the terms and conditions of this Agreement and, to the extent applicable, the other Transaction Agreements (as amended to reflect the changes described in clause (vi)); (iv) in the case of Thistle BV, the Transfer complies in all respects with the provisions of this Agreement and the Thistle BV Charter Documents; (v) the provisions of Article 11 shall upon such Transfer immediately cease to have any force or effect with respect to the other parent and its Group Companies; (vi) the parties shall amend this Agreement and the DirectorCo Charter Documents appropriately to reflect the change in

ownership of the equity interests in DirectorCo and changes in the governance provisions such that the non-Transferring parent shall have exclusive management and control of DirectorCo and in respect of all actions or decisions to be undertaken or made by DirectorCo as the sole director of the Management Board; and (vii) the other parent shall be entitled to cause a Distribution of Netco, in which case the provisions of Schedule 13.2 shall apply (it being understood that the other parent may or may not elect to do so).

(c) If, on or prior to the 10th anniversary of the Closing Date, such Netherlands counsel confirms that the continued prohibition on the Transfer of shares in Thistle BV or BT Holdings will be enforceable under Netherlands law, then following such 10th anniversary, the prohibition on the Transfer of shares in Thistle BV or BT Holdings shall be extended for the maximum period then permitted under Netherlands law. Thereafter, the provisions of Section 12.3(b) and this Section 12.3(c) shall apply again on or prior to the expiration of any such period or periods of extension.

12.4 Tax Consequences. Notwithstanding Section 12.2 or 12.3 and except as provided in Section 12.6, no Transfer of any shares or equity interests in VLT, BT Holdings, Thistle BV, DirectorCo, the Newco Services Company or the Newco Subsidiaries or any rights or interests therein or thereto or in the proceeds thereof shall be made or recognized if it would result in more than *de minimis* adverse Tax consequences to either parent, any of its Affiliates or Thistle BV.

12.5 Approval of Share Transfers. Each of the AT&T Parties and the BT Parties hereby waives the application of any of the provisions of the Thistle BV

Charter Documents which if enforced would block or delay any Transfer of the shares of Thistle BV that is permitted or required to be made by this Agreement and agrees to vote all of its shares of Thistle BV in favor of the approval of any such Transfer.

12.6 Netco Distribution. For the avoidance of doubt, the restrictions in this Article 12 shall not apply to any Distribution of Netco pursuant to Section 12.3, 13.2(a), 14.3(c), 16.4(c), 23.2(d), 23.6(b) or 27.1(c).

## ARTICLE 13

### CONSEQUENCES OF INVESTMENT BY A MAJOR COMPETITOR

13.1 Triggering Transaction. If any Person (together with its Subsidiaries, Affiliates and all Persons with whom it is acting as a Group) that is a Major Competitor of AT&T or BT acquires, directly or indirectly, beneficial ownership of (a) 25% or more but less than 30% of the Outstanding Company Common Stock or the Outstanding Company Voting Securities of the other parent (referred to below as the "Investee") and satisfies the Influence Test, (b) 30% or more but less than 45% of the Outstanding Company Common Stock or the Outstanding Company Voting Securities of the Investee, regardless of whether the Influence Test is met, or (c) 20% or more of the Outstanding Company Common Stock or Outstanding Company Voting Securities of the Investee and the provisions of paragraph (d) of the definition of "Influence Test" are met (with or without a Limitation), then, effective upon the consummation of the transaction in which the Person acquires such Outstanding Company Common Stock or Outstanding Company Voting Securities of the Investee (the "Triggering Transaction"), the following provisions of this Article 13 shall

apply. Any Person who satisfies the conditions of clause (a), (b) or (c) of this Section 13.1 shall be referred to in this Agreement as a **“Triggering Person.”**

13.2 **Remedies.** Except as otherwise set forth in this Article 13, but notwithstanding anything else in this Agreement to the contrary, the following remedies will be available immediately if there is a Triggering Person:

(a) The member of DirectorCo affiliated with the parent other than the Investee (the **“Other Parent”**) shall be entitled to appoint an additional Representative to the DirectorCo Board and the Other Parent shall have the right to cause Thistle BV, to the extent permitted by Applicable Law, to distribute or cause the distribution of the equity interests in Netco or the shareholders of Netco, to the shareholders of Thistle BV or their designees on a pro rata basis (such transfer, a **“Distribution of Netco”**), and the provisions of **Schedule 13.2** shall apply with respect thereto and any Taxes arising in connection with such Distribution of Netco shall be borne by the Investee (it being understood that the Other Parent may elect none, either or both of such remedies);

(b) The Other Parent shall have the right unilaterally to hire, appoint and remove the CEO; and

(c) The Other Parent shall have the right to nominate the CFO; **provided, however,** that the appointment of the CFO shall continue to require the approval of the Management Board in accordance with Section 3.5(b).

13.3 **Right to Cure.** Within the two year period following consummation of the Triggering Transaction, the Investee shall have the right to remedy the situation so that the Triggering Person does not meet the share ownership thresholds set forth in



Section 13.1 (unless any Person shall thereafter nonetheless independently satisfy the definition of "Triggering Person") either (a) in the case of a Person who became a Triggering Person as a result of clause (a) of Section 13.1, eliminating the conditions that cause the Influence Test to be satisfied, (b) in the case of a Person who became a Triggering Person as a result of clause (b) of Section 13.1, eliminating the conditions, if any, that cause the Influence Test to be satisfied and causing the ownership of the Outstanding Company Common Stock or the Outstanding Company Voting Securities of the Investee to be less than 30%, or (c) in the case of a Person who became a Triggering Person pursuant to clause (c) of Section 13.1, if the Influence Test is met with a Limitation, by eliminating the conditions, if any, that cause the Influence Test to be satisfied and causing the ownership of the Outstanding Company Common Stock or the Outstanding Company Voting Securities of the Investee to be less than 20%. In the case of a Person who became a Triggering Person pursuant to clause (c) of Section 13.1, if the Influence Test is not met with a Limitation, the Investee shall not have the right to remedy the situation and the provisions of Section 13.2 shall be in effect immediately upon consummation of the Triggering Transaction. In all other cases, if the Investee remedies the situation to the reasonable satisfaction of the Other Parent, the provisions of Section 13.2 shall no longer apply such that (x) the right to appoint an additional Representative to the DirectorCo Board shall cease, and (y) the rights of the Other Parent in Sections 13.2(b) and (c) shall terminate.

13.4 Right to Cause Dissolution of the Newco Group. If the Investee shall not have remedied the situation as provided in Section 13.3 within the two year period following the consummation of the Triggering Transaction (including a Triggering

Transaction in which the Influence Test is met with a Limitation), in addition to the rights of the Other Parent in Section 13.2, the Other Parent shall have the right, exercisable by notice in writing to the Investee within 60 days following the expiration of the two year cure-period, to elect to cause a dissolution of the Newco Group. Such dissolution shall be completed as soon as practicable following such notice by the Other Parent, but in any event, subject to compliance with mandatory requirements of Applicable Law, within two years following the date of such notice. The provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 13.4.

13.5 Immediate Right to Dissolve the Newco Group. If a Person becomes a Triggering Person as a result of clause (c) of Section 13.1 and if the Influence Test is not met with a Limitation, the Other Parent shall have the right, exercisable by notice in writing to the Investee within 60 days following the consummation of the Triggering Transaction, to elect to cause a dissolution of the Newco Group. Such dissolution shall be completed as soon as practicable following such notice by the Other Parent, but in any event, subject to compliance with mandatory requirements of Applicable Law, within two years following the date of such notice. The provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 13.5.

13.6 Application of Remedies. From the time a Person becomes a Triggering Person and throughout the period of the dissolution of the Newco Group, if a dissolution is elected, the provisions of Section 13.2 shall apply. If the Other

Parent does not elect to cause a dissolution of the Newco Group within the period when it has the right to do so, the provisions of Section 13.2 shall continue to apply.

13.7 Other Remedies. The rights and remedies set forth in this Article 13 shall be in addition to, and not exclusive of, any other rights or remedies to which the Other Parent may be entitled if the circumstances creating the Triggering Transaction also give rise to rights or remedies under any other provision of this Agreement (excluding, other than in the case of a Covered Investor or a Change of Control, Article 11) or Applicable Law.

## ARTICLE 14

### STANDSTILL PROVISIONS

14.1 Standstill Restrictions. From the date of this Agreement until (x) the second anniversary of the date of termination of this Agreement, (y) the completion of the dissolution of the Newco Group pursuant to Section 11.2(d), 11.5(c)(iii), 13.4, 13.5, 23.2, 23.4, 23.5 or 23.7, or otherwise or (z) the closing of any sale of the Put Shares or Call Shares, whichever is the latest (excluding any such event that is incapable of occurring), the parents shall not, and shall cause their Affiliates (excluding any employee benefit plan of a parent or its related trust) not to:

(a) acquire, publicly announce an intention to acquire, publicly offer to acquire or propose to the board of directors of the other parent to acquire, or agree to acquire, directly or indirectly, by purchase or otherwise, any beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of any Outstanding Company Common Stock or Outstanding Company Voting Securities (in

either case, the "Voting Securities") of the other parent, or direct or indirect rights or options to acquire (through purchase, exchange, conversion or otherwise) any Voting Securities of the other parent, except that BT may, directly or indirectly, acquire up to 100,000 shares of the Voting Securities of AT&T in order to achieve capital gains grouping between BT and one or more U.K. resident Subsidiaries of Thistle BV;

(b) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" (as such terms are defined in Rule 14a-1 under the Exchange Act) to vote any Voting Securities of the other parent, initiate or propose any shareholder proposal or intentionally induce any other Person to initiate any shareholder proposal;

(c) make any proposal, whether written or oral, to the board of directors of the other parent, or make any public announcement or public proposal whatsoever, with respect to a merger or other business combination, sale or transfer of assets, recapitalization, liquidation or other extraordinary corporate transaction with the other parent or any other transaction which could result in a Change of Control of such other parent, or intentionally induce any other Person to make any such proposal;

(d) form, join or in any way participate in a group with respect to any Voting Securities of the other parent;

(e) otherwise act, alone or in concert with others, intentionally to seek to exercise any influence over the management or board of directors of the other parent, excluding (i) any discussions between or among representatives of the AT&T

Parties, the BT Parties, Thistle BV or the Newco Group that properly relate to the operation of the Newco Group or DirectorCo or the participation of VLT or BT Holdings as shareholders in Thistle BV or the relevant Affiliates of AT&T or BT as shareholders or members in DirectorCo, Newco Services Company or any of the Newco Subsidiaries as contemplated by the Transaction Agreements or any other informal and non-coercive discussions among members of senior management, and (ii) statements made by a parent regarding the business or operations of the other parent that were not made with a view to seeking Control of the other parent;

(f) make a public request to the other parent (or its directors, officers, shareholders, employees or agents) to amend, waive or modify or not to enforce any provisions of this Article 14;

(g) take any action which is reasonably likely to require the other parent to make a public announcement regarding the possibility of any transaction referred to in clause (c) above or similar transaction; or

(h) publicly disclose any intention, plan or arrangement inconsistent with any of the foregoing clauses (a) through (g).

#### 14.2 Release of Standstill.

(a) If any third party (i) makes any offer to the board of directors or shareholders of either parent to acquire or has acquired more than 10% but less than 45% of the Voting Securities of such parent (the "target parent"), and such third party is financially capable of completing such acquisition or (ii) makes an offer to the board of directors of either parent with respect to an Acquisition Proposal (as defined below) involving the target parent (for the avoidance of doubt, excluding any

open market purchases of 10% or less of the Voting Securities of a Person or the issuance by either parent of Voting Securities in connection with the acquisition of a business or assets), and such third party is financially capable of completing the acquisition of such Voting Securities, (x) in the case of clause (i), the other parent may make an offer comparable in scope to the third party offer to the target parent, and (y) in the case of clause (ii), the other parent shall no longer be bound by the restrictions set forth in Section 14.1 until such offer has been withdrawn or terminated, in which case the restrictions of Section 14.1 shall be reinstated; provided, however, that neither the board of directors nor the management of the target parent shall be required to accept the offer from the other parent or give such offer any preference over the third party offer or any other offers made by other third parties; and provided, further, however, that in the case of clause (ii), the other parent, if it chooses to make an Acquisition Proposal for the target parent during a period in which the restrictions of Section 14.1 do not apply, will not make such Acquisition Proposal for less than the percentage of the Voting Securities of the target parent that is the subject of the third party's Acquisition Proposal.

(b) If either AT&T or BT makes a public announcement that it has reached agreement with a third party with respect to an Acquisition Proposal or that it is considering alternatives including Acquisition Proposals from third parties, the other parent may thereafter make an Acquisition Proposal to the board of directors or shareholders of AT&T or BT, as the case may be, and shall no longer be bound by the restrictions set forth in Section 14.1. For the purposes of this Section, an "Acquisition Proposal," with respect to any Person, shall mean any proposal made

by a financially capable third party to effect (i) a Change of Control of such Person, (ii) a Business Combination, or (iii) any other acquisition of 45% or more of such Person's Voting Securities.

(c) If an event specified in paragraph (b) of the definition of Change of Control shall have occurred, the other parent shall no longer be bound by the restrictions set forth in Section 14.1.

#### **14.3 Breach of Standstill Provisions.**

(a) If a parent breaches its obligations in Section 14.1, the other parent may bring a suit, action or proceeding directly to the District Court to enjoin such breach, and need not refer the matter to the Wise Counselor.

(b) Each parent acknowledges and agrees that the other parent would be irreparably damaged if it breaches its obligations in Section 14.1. It is accordingly agreed that the non-breaching parent, in addition to any other remedy to which it may be entitled at law or equity, shall be entitled to an injunction to prevent breaches of Section 14.1 and to enforce specifically the terms of this Article and to seek a substantial award of damages, including damages resulting from the disruption of its business and interference with its ongoing Governmental Approvals or Permits as a result of such breach.

(c) Without limiting the foregoing, if a parent breaches its obligations in Section 14.1, the non-breaching party may exercise any or all of the following rights:

(i) The non-breaching party shall have the right, by notice in writing to the breaching party within 90 days after the occurrence of the

breach, to elect to cause a dissolution of the Newco Group. Such dissolution shall be completed as soon as practicable following such notice by the non-breaching party, but in any event, subject to compliance with mandatory requirements of Applicable Law, within two years following the date of such notice. Except as provided in this Section 14.3(c), the provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section;

(ii) The provisions of Article 11 shall be of no further force or effect with respect to the non-breaching party and its Group Companies from and after the occurrence of the breach. The provisions of Article 11 shall be of no further force or effect with respect to the breaching party and its Group Companies from and after the completion of the dissolution of the Newco Group;

(iii) The Affiliate of the non-breaching party that is a member of DirectorCo shall be entitled to appoint an additional Representative to the DirectorCo Board for a period of five years commencing on the date of the occurrence of the breach; and

(iv) The non-breaching party shall be entitled to cause a Distribution of Netco, in which case, the provisions of Schedule 13.2 shall apply with respect thereto. Any Taxes arising in connection with such Distribution of Netco shall be borne by the breaching party.



## ARTICLE 15

CONTRIBUTION OF ASSETS; ASSUMED LIABILITIES15.1 Initial Capital Contributions.

(a) Schedule 15.1A and Schedule 15.1B identify certain businesses, contracts and other assets to be contributed (collectively, the “Initial Contributed Assets”) by the AT&T Sellers and the BT Sellers, respectively, to Thistle BV and the Newco Subsidiaries on the Closing Date.

(b) On the Closing Date, Thistle BV or a Newco Subsidiary will assume:

(i) Liabilities arising out of, relating to or resulting from the AT&T GCS Business from and after the Closing Date and any Excluded AT&T Liabilities to the extent AT&T ceases to be liable to indemnify Thistle BV in respect thereof as provided in Section 25.4(c) (collectively, the “Assumed AT&T Liabilities”); and

(ii) Liabilities arising out of, relating to or resulting from the BT GCS Business from and after the Closing Date, the Assumed Concert Purchase Debt, the Indebtedness of Concert as contemplated by Section 15.7(a), Liabilities of Concert that are reflected in the Concert Financials or that arise or have arisen in the ordinary course of business from April 1, 1998 to the Closing Date (but excluding any material Liabilities associated with material Actions that arise or occur prior to the Closing Date), and any Excluded BT Liabilities to the extent BT ceases to be liable to indemnify Thistle BV in respect thereof as provided in Section 25.4(d)

(collectively, the "Assumed BT Liabilities," and together with the Assumed AT&T Liabilities, the "Assumed Liabilities").

(c) To effectuate the transfer of the Initial Contributed Assets and assumption of the Assumed Liabilities, in each case as updated pursuant to Section 15.1(d), Thistle BV and each parent shall, and shall cause its relevant Affiliates to, at the Closing, (i) in the case of the AT&T Sellers, enter into the Asset Contribution Agreement (AT&T), and (ii) in the case of the BT Sellers, enter into the Asset Contribution Agreement (BT).

(d) The schedules to the Asset Contribution Agreements shall be based on Schedule 15.1A and Schedule 15.1B attached hereto but shall, on or prior to the Closing Date, be updated to (i) reflect changes to specific businesses or assets as a result of dispositions, capital expenditures and other transactions permitted in this Agreement and corresponding changes in the Liabilities to be transferred or assumed in connection therewith and to reflect whether the AT&T Assets or the BT Assets, as the case may be, will be contributed directly or through Contributed AT&T Subsidiaries or Contributed BT Subsidiaries, as the case may be and (ii) include contracts with customers (but not with additional Qualifying MNC Customers) which are in effect on the date hereof and the revenues for which were included in the preparation of the business plan previously agreed by the parents. No later than 10 days prior to the Closing Date, each parent shall provide to the other parent for its review an updated schedule of the assets and Liabilities to be contributed by it at the Closing. The parents shall endeavor to resolve by the Closing Date any disagreements between them relating to the updated schedules.

(e) The parties agree that no assets will be transferred from any employee benefit plan or trust of either parent or its Affiliates to any member of the Newco Group or any benefit plan or trust of any member of the Newco Group.

15.2 Management Board Valuation; Accountants' Statement. At the Closing, the AT&T Parties and the BT Parties shall cause DirectorCo, in its capacity as the sole director of Thistle BV, to prepare a description of the AT&T Assets and the BT Assets complying with the requirements of Book 2, article 204a, of the Dutch Civil Code (the "Management Board Valuation"), setting forth (i) a description of the AT&T Assets and the BT Assets, (ii) the total valuation assigned to the AT&T Assets and the BT Assets and (iii) the method(s) used in arriving at such valuation. The parents shall use their Reasonable Best Efforts to obtain at the Closing a statement of PricewaterhouseCoopers or another qualified accounting firm acceptable to the parents, complying with the requirements of Book 2, article 204b, of the Dutch Civil Code (the "Accountants' Statement") to the effect that the value of the AT&T Assets and BT Assets is at least equal to the aggregate par value of the shares of Thistle BV to be issued at the Closing in consideration for the contribution of the AT&T Assets and BT Assets. At the Closing, Thistle BV's capital surplus (*agio*) account shall be credited with an amount equal to the amount by which the value of the AT&T Assets and BT Assets as set forth in the Management Board Valuation exceeds the aggregate par value of the shares of Thistle BV issued in exchange for the AT&T Assets and the BT Assets.

### 15.3 Transfers.

(a) At the Closing, upon the terms and subject to the conditions set forth herein and in the Asset Contribution Agreement to which it is a party:

(i) AT&T shall, and shall cause the other AT&T Sellers to, transfer the Assets to be contributed by them as set forth in Schedule 15.1A, as updated pursuant to Section 15.1(d) (the "AT&T Assets") and the share capital in any Contributed AT&T Subsidiary to be contributed by them, as of the Closing, subject to Section 15.3(d), free and clear of all Liens consisting of pledges, mortgages, security interests, claims, leases or voluntary liens, to Thistle BV and the relevant Newco Subsidiaries;

(ii) BT shall, and shall cause the other BT Sellers to, transfer the Assets to be contributed by them as set forth in Schedule 15.1B, as updated pursuant to Section 15.1(d) (the "BT Assets"), the share capital in any Contributed BT Subsidiary to be contributed by them and the Assets of the Contributed BT Subsidiaries to be, as of the Closing, subject to Section 15.3(e), free and clear of all Liens consisting of pledges, mortgages, security interests, claims, leases or voluntary liens, other than, in the case of Concert, the Liabilities described in clauses (i), (ii) and (iii) of paragraph (c) of the definition of "Excluded BT Liabilities," to Thistle BV and the relevant Newco Subsidiaries; and

(iii) Thistle BV or the relevant Newco Subsidiaries shall assume the Assumed Liabilities.

(b) In addition to the Assets set forth on Schedule 15.1A and Schedule 15.1B, each parent will, or will cause its Subsidiaries to, contribute to Thistle BV or the relevant Newco Subsidiary all personal property that is exclusively used in the AT&T GCS Business and BT GCS Business, respectively.

(c) To the extent that ownership of the AT&T Assets and BT Assets or assumption of the Assumed Liabilities by Thistle BV would cause Thistle BV to cease to be a Qualified Holding Company, Thistle BV shall at the Closing cause such AT&T Assets and the BT Assets and Assumed Liabilities to be transferred to or assumed by one or more of the Newco Subsidiaries; provided, however, that the foregoing shall not limit or alter any obligation of Thistle BV pursuant to Article 25.

(d) Thistle BV shall use its commercially reasonable efforts to cause itself or one of the Newco Subsidiaries to be substituted in all respects for AT&T or any of AT&T's Affiliates (except the Contributed AT&T Subsidiaries) under, and shall use its commercially reasonable efforts to cause AT&T and any such Affiliates to be released and fully discharged from, any Liability relating to, arising out of or resulting from any and all Assumed AT&T Liabilities, including all Liabilities of AT&T or any such Affiliate (x) under any Contributed AT&T Contract and (y) under each of the guarantees, letters of credit, letters of comfort, bid bonds, performance bonds and similar obligations obtained or issued by AT&T or any such Affiliate for the benefit of any of the Contributed AT&T Subsidiaries or otherwise relating to the AT&T GCS Business (all of the foregoing, the "AT&T Guarantees").

(e) Thistle BV shall use its commercially reasonable efforts to cause itself or one of the Newco Subsidiaries to be substituted in all respects for BT or any

of BT's Affiliates (except the Contributed BT Subsidiaries) under, and shall use its commercially reasonable efforts to cause BT and any such Affiliates to be released and fully discharged from, any Liability relating to, arising out of or resulting from any and all Assumed BT Liabilities, including all Liabilities of BT or any such Affiliate (x) under any Contributed BT Contract and (y) under each of the guarantees, letters of credit, letters of comfort, bid bonds, performance bonds and similar obligations obtained or issued by BT or any such Affiliate for the benefit of any of the Contributed BT Subsidiaries or otherwise relating to the BT GCS Business, including the guarantees, letters of credit, letters of comfort, bid bonds, performance bonds and other obligations set forth on Schedule 15.3(e) (all of the foregoing, whether or not on such Schedule, the "**BT Guarantees**").

(f) In principle, share capital of the Contributed AT&T Subsidiaries and the Contributed BT Subsidiaries, the AT&T Assets and the BT Assets and the Assets of the Contributed BT Subsidiaries shall be contributed to the Newco Group free and clear of all Liens consisting of pledges, mortgages, security interests, claims, leases or voluntary liens other than, in the case of Concert, the Liabilities described in clauses (i), (ii) and (iii) of paragraph (c) of the definition of "Excluded BT Liabilities." Notwithstanding the foregoing, if, during the process of updating Schedule 15.1A and Schedule 15.1B as provided in Section 15.1(d), an Asset may be contributed to the Newco Group subject to a Lien consisting of pledges, mortgages, security interests, claims, leases or voluntary liens, the party that is contributing such Asset shall also make a cash contribution to Thistle BV in an amount determined by the contributing party using its best good faith judgment to be the value or amount of

such Lien or, if Thistle BV is contributing such Asset, it may, at its option, forgive a portion of the outstanding Assumed Concert Purchase Debt. Any such capital contribution shall be made by wire transfer of same day funds on the Closing Date. The amount of such cash capital contribution shall be credited to the capital surplus (*agio*) account of Thistle BV.

(g) As of the Closing, (i) AT&T shall eliminate, either by cancellation or settlement as it shall determine, net intercompany receivables, payables and loans existing between AT&T or any of its Affiliates (other than the Contributed AT&T Subsidiaries), on the one hand, and the Contributed AT&T Subsidiaries, on the other hand, and (ii) BT shall eliminate, either by cancellation or settlement as it shall determine, net intercompany receivables, payables and loans existing between BT or any of its Affiliates (other than the Contributed BT Subsidiaries), on the one hand, and the Contributed BT Subsidiaries, on the other hand.

(h) At the Closing, with respect to prepaid expenses, deferred revenue and similar items relating to the AT&T GCS Business and BT GCS Business, each parent and Thistle BV or the relevant Newco Subsidiary shall do a proration thereof for the period prior to and including the Closing Date and for the period from and after the Closing Date. The amounts thereof for the period prior to and including the Closing Date shall be for the account of the parent or its relevant Affiliate and the amounts thereof for the period from and after the Closing Date shall be for the account of Thistle BV or the relevant Newco Subsidiary. Each parent, on the one hand, and Thistle BV, on the other hand, shall cooperate to make appropriate

arrangements to effect the proration described herein and to ensure that accounts receivable with respect to the pre-Closing period are for the account of each parent.

#### 15.4 Minimum Contribution.

(a) The parties agree that, on the Closing Date (i) AT&T shall be obligated to contribute or cause to be contributed Global Network Facilities (other than Managed Network Services Facilities), and work-in-process related thereto arising from money invested or spent but not merely committed to (such work-in-process, "WIP"), with a net book value of no less than an amount calculated for AT&T in accordance with Schedule 15.4 (the "AT&T Minimum Contribution") and (ii) BT shall be obligated to contribute or cause to be contributed Global Network Facilities (other than Managed Network Services Facilities) and WIP with a net book value of no less than an amount calculated for BT in accordance with Schedule 15.4 (the "BT Minimum Contribution") (it being agreed that the value of BT IntermediateCo, Concert Holdings and its Subsidiaries shall not be included in the determination of the BT Minimum Contribution). The AT&T Minimum Contribution and the BT Minimum Contribution are referred to as the "Minimum Contributions" and individually a "Minimum Contribution".

(b) On the Closing Date, the parents shall jointly instruct an internationally recognized firm of independent certified public accountants of outstanding reputation that is mutually acceptable to the parents (the "Designated Accountants") to conduct a verification of the net book value of the Global Network Facilities (other than Managed Network Services Facilities) and WIP constituting a part of the BT Assets and the AT&T Assets as of the Closing Date as listed on



Schedule 15.1A and Schedule 15.1B as such Schedules are updated prior to the Closing Date in accordance with Section 15.1(d). For the purposes of determining the net book values, the Designated Accountants will be instructed to use, in the case of the applicable BT Assets, the accounting policies and practices of BT used in determining the net book values of the Global Network Facilities (other than those owned by BT IntermediateCo, Concert Holdings and their Subsidiaries) that are listed on Schedule 15.1B, which values have been separately agreed to by the parents, and in the case of the applicable AT&T Assets, the accounting policies and practices of AT&T used in determining the net book values of the Global Network Facilities that are listed on Schedule 15.1A, which values have been separately agreed to by the parents, in each case as such accounting policies and practices are consistently applied. The parents shall jointly instruct the Designated Accountants to complete their verification and issue their report thereon within 15 days following the Closing Date or as soon thereafter as the Designated Accountants can do so but in any event no later than 25 days after the Closing Date. The fees and expenses of the Designated Accountants shall be borne equally by the parents. The Designated Accountants shall act as an expert and not as an arbitrator. Absent manifest error, the net book values determined by the Designated Accountants shall be final and binding on the parents and the parents expressly waive any right they may have to seek judicial review of such determination on any ground.

(c) If the Designated Accountants determine and state in their report that the Contribution of Global Network Facilities (other than Managed Network Services Facilities) and WIP as listed on Schedule 15.1A and Schedule 15.1B, as such

Schedules are updated to the Closing Date in accordance with Section 15.1(d) (i) by AT&T is less than the AT&T Minimum Contribution or (ii) by BT is less than the BT Minimum Contribution, then either or both of the relevant parents, as the case may be, shall be required to make up the shortfall between its Minimum Contribution and the net book value of its Global Network Facilities (other than Managed Network Services Facilities) and WIP so determined by making a cash capital contribution to Thistle BV (or, in the case of BT, by forgiving all or a portion of the outstanding Assumed Concert Purchase Debt) in the amount of such shortfall. Any such cash capital contribution shall be made by wire transfer of same day funds within five days after the delivery by the Designated Accountants of their report to each of the parties, but in no event later than 30 days after the date of Contribution of the AT&T Assets and the BT Assets. The amount of such cash capital contribution shall be credited to the capital surplus (*agio*) account of Thistle BV.

#### 15.5 Concert Shares.

(a) Concert Holdings Ltd. ("Concert Holdings"), a wholly-owned Subsidiary of BT, owns, legally, beneficially and of record, 100% of the share capital of Concert and BT, through BT Holdings, owns legally, beneficially and of record 100% of the share capital of Concert Holdings. After the date of this Agreement and prior to the Closing, BT Holdings will form a wholly-owned Subsidiary ("BT IntermediateCo") to which it will contribute all of the share capital of Concert Holdings, which will thereafter own legally, beneficially and of record 100% of the share capital of Concert Holdings. At the Closing, BT Holdings will contribute the share capital in Concert to the Newco Group by transferring to Thistle BV its equity

interests in BT IntermediateCo, which will thereafter own legally, beneficially and of record 100% of the share capital of BT IntermediateCo.

(b) The parents acknowledge that prior to the date of this Agreement, Concert Holdings acquired from MCI the 24.9% equity interest in Concert previously held by MCI (the "Purchased Shares") and that such purchase of the Purchased Shares has been financed by BT Holdings by debt with interest rates and other provisions on market terms. The amount of Indebtedness of Concert Holdings incurred to fund the purchase of the Purchased Shares and to be assumed by Thistle BV or any of the Newco Subsidiaries does not exceed \$1 billion (the "Assumed Concert Purchase Debt"). For the purposes of this Section 15.5, subject to Section 15.5(c), the term "Cap" means \$500 million.

(c) Prior to the Closing, BT will negotiate with AT&T in good faith to purchase for fair market value a package of assets from AT&T or any of its Affiliates for an amount equal to the Cap. Without being required to offer any particular assets to BT, AT&T will use its Reasonable Best Efforts to offer to BT a package of assets, and negotiate in good faith with respect thereto, with the mutual intention that the downward adjustment in the Cap referred to below in this Section 15.5(c) will not be necessary. The assets to be offered by AT&T will include assets located in Continental Europe, in North America, and in such other locations as may be reasonably agreed by AT&T and BT; provided, that, any assets located in the United States to be offered by AT&T shall be selected by AT&T in its discretion. If the parents cannot agree on the valuation of the assets being offered by AT&T to BT, either parent may, by written notice to the other, require that the valuation be

determined by an Appraiser pursuant to the provisions of Annex 2. Any sale and purchase of assets pursuant to this Section 15.5(c), shall be in accordance with terms and conditions mutually acceptable to the parents and set forth in a definitive stock or asset purchase agreement, which shall contain mutually acceptable provisions regarding the assumption of liabilities and mutually acceptable representations and warranties comparable in nature and scope to those contained herein, which representations and warranties shall not survive the closing of the transactions contemplated therein. It is the intention of AT&T and BT that such stock or asset purchase agreement shall be executed on or before the Closing. The consummation of such sale and purchase shall be as soon as practicable thereafter. If (x) AT&T has complied with its obligations under this Section 15.5(c) and BT or its designee has purchased assets from AT&T pursuant to this Section 15.5(c) with a value less than the Cap or (y) no definitive agreements for the sale and purchase of assets of AT&T with a fair market value equal to the Cap have been entered into or the sale and purchase of such assets has not been consummated, in either case on or prior to the first anniversary of the Closing Date, then on such first anniversary of the Closing Date the Cap will be adjusted downward Dollar-for-Dollar in AT&T's favor to offset the difference between the Cap and the value of the assets purchased and BT Holdings shall, at its option, make a cash capital contribution to Thistle BV or forgive a portion of the outstanding Assumed Concert Purchase Debt, in either case in an amount equal to two times such difference, subject to the provisions of the following sentence. The requirement that the sale and purchase of AT&T assets be consummated by BT on or prior to the first anniversary of the Closing Date shall be postponed by the same

amount of time involved, but for no longer than one year thereafter, in receiving regulatory approvals if any regulatory approval is not received in a prompt and timely manner and without delay, for any reason other than a failure by BT diligently to pursue such regulatory approvals in good faith (without any obligation on BT to incur more than *de minimis* cost or compromise any of its other business interests). The amount of any such cash contribution to Thistle BV shall be credited to the capital surplus (*agio*) account of Thistle BV.

15.6 Non-Concert Product Contributions. Within 30 days following the Closing Date, each of AT&T and BT shall prepare a statement of profit and loss showing the results after tax for the operation of their Non-Concert Product Contributions during the period from the date of this Agreement to the Closing Date. The applicable tax rate for purposes of such calculation shall be the effective tax rate of the relevant parent reflected in its financial statements for its most recently completed fiscal year. Such statements shall be prepared in accordance with U.S. GAAP in the case of AT&T and U.K. GAAP in the case of BT, in each case consistently applied and consistent with the principles used in the preparation of Schedule 15.6. If the profits after tax from the operation of the Non-Concert Product Contributions of either or both parents shall fail to meet the forecasts of profit after tax set forth in Schedule 15.6, the parent or parents whose Non-Concert Product Contributions is deficient shall cause VLT or BT Holdings, as the case may be, to contribute to Thistle BV within 30 days after the completion of the statement of profit and loss, an additional amount in cash equal to (or, in the case of BT Holdings, BT Holdings may, at its option, forgive a portion of the outstanding Assumed Concert

Purchase Debt in an amount equal to) the difference between the forecasted profit and loss of the Non-Concert Product Contributions and the actual profit after tax of such businesses for such period. Notwithstanding the foregoing, if a parent disputes the statement of profit and loss of the other parent, the parents shall jointly instruct the Designated Accountants or such other firm of independent certified public accountants mutually acceptable to them to confirm and verify the disputed statement of profit and loss within 10 days of their appointment, in which case the required capital contribution (or, in the case of BT Holdings, any forgiveness of any portion of the outstanding Assumed Concert Purchase Debt) shall be made within 30 days after the parents' receipt of the report of the Designated Accountants or such other accounting firm. The amount of any cash contribution to Thistle BV pursuant to this Section 15.6 shall be credited to the capital surplus (*agio*) account of Thistle BV.

15.7 Concert Funding.

(a) The parents agree that, from the date of this Agreement to the Closing Date, BT shall cause Concert to be funded by incurring Indebtedness with interest rates and other provisions on market terms.

(b) Within 30 days after the Closing Date, Thistle BV shall cause the Independent Auditor to prepare a profit and loss account for Concert for the period from March 31, 1998 to the Closing Date. The applicable tax rate for purposes of such calculation shall be the effective tax rate of Concert reflected in its financial statements for its most recently completed fiscal year. If, based on such profit and loss account, Concert has failed to meet the forecasts of net after-tax profits set forth in Schedule 15.7, BT Holdings will within 30 days after its receipt of the

profit and loss account either (i) make a capital contribution to Thistle BV in an amount equal to the shortfall between the forecasted net after-tax profits set forth in Schedule 15.7 and the actual net after-tax profits of Concert for the period ending on the Closing Date or (ii) otherwise appropriately compensate Thistle BV with respect to such shortfall in a manner mutually acceptable to the parents. Notwithstanding the foregoing, if either BT or AT&T disputes the profit and loss account for Concert prepared by the Independent Auditor, the parents shall jointly instruct the Designated Accountants or such other firm of independent certified public accountants mutually acceptable to them to confirm and verify the profit and loss account prepared by the Independent Auditor within 10 days of their appointment, in which case BT Holdings shall make its capital contribution or other mutually acceptable compensation within 30 days after its receipt of the report of the Designated Accountants or such other accounting firm. The amount of any such cash contribution to Thistle BV shall be credited to the capital surplus (*agio*) account of Thistle BV.

15.8 Liability for Transaction Gains Taxes. BT shall be responsible for any BT Transaction Gains Taxes other than Excluded Taxes, and AT&T shall be responsible for any AT&T Transaction Gains Taxes other than Excluded Taxes. The parents shall cooperate with each other to minimize any Transaction Gains Taxes to the extent there exists a means of minimizing any such Tax liabilities without adversely affecting the other parent.

15.9 Issuance of Shares. At the Closing, in consideration for the contribution by the BT Sellers and the AT&T Sellers to the Newco Group of the BT Assets and the AT&T Assets, respectively, Thistle BV shall, and shall cause the

applicable Newco Subsidiaries (including Concert Holdings) to, issue the appropriate number and class of shares or other equity interests to AT&T or one of its Affiliates and BT or one of its Affiliates as identified on Schedule 2.2, which in the case of shares of Thistle BV, shall be effected pursuant to a notarial deed of issuance substantially in the form of Exhibit L. If any such shares or other equity interests are evidenced by certificates, such certificates shall bear an appropriate legend stating that the Transfer of the shares or equity interests evidenced thereby is restricted under this Agreement.

15.10 Waiver of Preemptive Rights. Each of the AT&T Parties and the BT Parties hereby waives the applicability of any preemptive right (*voorkeursrecht*) to which such party may be entitled with respect to any issuance of shares of Thistle BV required to be made pursuant to this Agreement.

15.11 United States Tax Treatment. It is the intention of the parents that Thistle BV and all Check the Box Entities shall be treated as partnerships, and all Disregarded Entities shall be treated as entities disregarded from their owner, for U.S. federal income tax purposes. Accordingly, the provisions of Annex 3 are intended, among other things, to achieve for the parents an allocation of the profits and losses of the Newco Group for U.S. federal income tax purposes consistent with the requirements of the provisions of the Code applicable to partnerships. Furthermore, the provisions of Annex 3 shall be interpreted in a manner consistent with the requirements of the Code. The parties agree that the constitutive documents of each Check the Box Entity, other than Thistle BV, will contain provisions consistent with the provisions of Annex 3 and the requirements of the Code. For



federal income tax purposes, the parties agree that the adjustments required by Sections 15.4, 15.5, 15.6 and 15.7 shall be made as of the Closing Date. Upon completion of the adjustments in Sections 15.4, 15.5, 15.6 and 15.7, the parties agree that their contributions to the Newco Group will be of equal value.

15.12 Concert Receivable. BT agrees that disputes concerning intercompany receivables existing on the date hereof on the Clover Financials shall be resolved in Concert's favor.

## ARTICLE 16

### ADDITIONAL CAPITAL CONTRIBUTIONS

#### 16.1 Future Contributions of Managed Network Services Facilities:

##### Contracts.

(a) After the Closing, the parents shall contribute Managed Network Services Facilities to the Newco Group as contemplated by Section 7.4(c).

Appropriate Asset Contribution Agreements shall be entered into by the applicable parent or its Affiliates and Thistle BV. The parties agree that no valuation shall be made of the Managed Network Services Facilities when they are actually contributed to the Newco Group. In addition, neither parent shall be required to make any true-up payment in connection with such contributions. The provisions of Section 15.3(c) shall be applicable, *mutatis mutandis*, to any contribution of the Managed Network Services Facilities pursuant to this Section 16.1(a).

(b) After the Closing, the parents shall contribute customer contracts to the MNC Newco Subsidiaries as contemplated by Section 7.2 and in

accordance with Schedule 16.1. For this purpose, after the Closing, the parents shall conduct reviews of the status of the inclusion of additional customers from additional Selected Industry Sectors on a quarterly basis. Schedule 16.1 sets forth the timing of such contributions, the valuation thereof and the method of making the true-up payments in respect thereof.

16.2 Future Cash Capital Contributions.

(a) On or after the Closing Date, subject to Section 3.5, the Management Board may require each of VLT and BT Holdings to make additional capital contributions to Thistle BV in such amounts and at such times as shall be set forth in the relevant approved AOPB or, subject to Section 6.3(b), a Provisional AOPB (a "Capital Call").

(b) All additional capital contributions required to be made pursuant to this Agreement shall, unless the Management Board decides otherwise, be made in Dollars and shall be made by way of subscription for additional shares in Thistle BV or in the form of shareholder loans or loans from third parties, as determined by the Management Board in the AOPB or, if no such determination has been made, as determined by the CEO. In the case of third party loans, such loans may, subject to Section 3.3(e), involve recourse to the AT&T Parties and the BT Parties.

(c) Any issuance of shares of Thistle BV in connection with any Capital Call shall be effected pursuant to a notarial deed of issuance substantially in the form of Exhibit L. The amount of any such capital contribution in excess of the aggregate par value of the shares of Thistle BV issued in exchange for such contribution shall be credited to the capital surplus (*agio*) account of Thistle BV.

16.3 Notice of Capital Calls. If the Management Board determines to make a Capital Call in accordance with Section 3.5 or a Capital Call is otherwise provided for in the relevant AOPB or Provisional AOPB, Thistle BV shall send to each of VLT and BT Holdings a written notice of a Capital Call (a "Capital Call Notice"), which shall set forth, among other things, the amount of additional capital contributions to be made by each of VLT and BT Holdings, the form of such contributions and the date (the "Capital Call Date") by which such additional capital contributions shall be made. The Capital Call Date shall be not less than 20 days following the date on which such Capital Call Notice is delivered. Each of VLT and BT Holdings shall be obligated to make its pro rata share of such contributions.

16.4 Failure to Make Additional Capital Contributions.

(a) If VLT or BT Holdings fails to fund a Capital Call on or prior to the Capital Call Date, (i) Thistle BV shall promptly notify each parent of such failure (such defaulting shareholder, a "Defaulting Shareholder" and such failure, a "Funding Breach"), and (ii) the amount funded by the non-defaulting shareholder (the "Non-Defaulting Shareholder") shall *ab initio* be deemed to be a loan, with interest and other provisions on market terms, and no shares of Thistle BV will be issued with respect thereto. The Defaulting Shareholder shall have 20 days from the date of delivery of notice of the Funding Breach to cure delivering to Thistle BV the additional capital contribution required under the Capital Call Notice, together with interest thereon calculated at LIBOR applicable on the Capital Call Date, plus 4%, from and including the Capital Call Date up to but excluding to the date of payment.

(b) If a Defaulting Shareholder shall fail to deliver its additional capital contribution, together with interest thereon as provided in Section 16.4(a), within the 20-day cure period, then all rights of the Defaulting Shareholder to receive additional shares in Thistle BV pursuant to such Capital Call, if applicable, shall cease and, for a period of 60 days after the expiration of the 20-day cure period, the Non-Defaulting Shareholder shall have the option, by capital contribution or by loan with interest and other provisions on market terms, to provide all or any part of the Defaulting Shareholder's additional capital contribution to Thistle BV without payment of default interest. If the Non-Defaulting Shareholder decides to provide all or any part of the Defaulting Shareholder's additional capital contribution by way of a capital contribution, it shall have the right to receive additional shares in Thistle BV in consideration therefor. If BT or any of its Affiliates is the Non-Defaulting Shareholder and decides to make such capital contribution by way of a loan, it shall have the right at any time to convert the principal amount of, and all accrued and unpaid interest on, such loan into a capital contribution to Thistle BV, in connection with which it shall be entitled to receive additional shares in Thistle BV. The number of additional shares in Thistle BV issuable to the Non-Defaulting Shareholder in connection with such converted loan shall be determined based on the per share consideration applicable to the Capital Call in question.

(c) In addition to the provisions of Section 16.4(b), if there has been a Funding Breach, (i) the Non-Defaulting Shareholder (or its Affiliate that is a member of DirectorCo) shall be entitled to appoint an additional Representative to the DirectorCo Board effective as of the expiration of the 20-day cure period if the

Funding Breach has not been cured within such 20-day period; provided, that, if the Non-Defaulting Shareholder wishes to waive such right, it shall notify the other parties prior to the expiration of the 20-day cure period, and (ii) the parent of the Non-Defaulting Shareholder shall have the right to cause a Distribution of Netco, in which case the provisions of Schedule 13.2 shall apply and the parent of the Defaulting Shareholder shall bear any Taxes arising in connection therewith (it being understood that the Non-Defaulting Shareholder may elect none, either or both of such alternatives).

(d) If a Defaulting Shareholder fails to make additional capital contributions with respect to three separate consecutively issued Capital Call Notices, it shall be deemed to have committed a material breach of this Agreement as provided in Section 22.3(a), and the Non-Defaulting Shareholder shall have the rights specified in Section 23.4.

## ARTICLE 17

### REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of AT&T. AT&T represents and warrants to the BT Parties and Thistle BV as follows:

(a) **Organization and Standing.** AT&T is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and VLT is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each has all requisite corporate power and corporate authority necessary to enable it to own, lease or otherwise hold its

properties and assets and to carry on its business as presently conducted. Each of the other AT&T Sellers and the Contributed AT&T Subsidiaries is duly organized and validly existing and, with respect to those Persons organized under the laws of states of the United States, in good standing, under the laws of the jurisdiction of its organization, except for such failure to be in good standing which would not, individually or in the aggregate have a Material Adverse Effect on the Venture Business taken as a whole (a **"Venture Business Material Adverse Effect"**). Each of the other AT&T Sellers and the Contributed AT&T Subsidiaries (i) has all requisite corporate, partnership or limited liability company power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted, and (ii) is duly qualified to transact business in each jurisdiction in which the nature of property owned or leased by it or the conduct of its business requires it to be so qualified, except for such failure to be so qualified as would not individually or in the aggregate have a Venture Business Material Adverse Effect.

(b) **Authorization; Validity.** Each of AT&T and VLT has all requisite corporate power and corporate authority to execute and deliver this Agreement and the IPR Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Each of AT&T, VLT and their Affiliates will have at the Closing all requisite corporate, partnership or limited liability company power and authority to execute and deliver the Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, to perform its obligations under such other Transaction Agreements and the Local Purchase Agreements to which it is a party and

to consummate the transactions contemplated thereby. The execution, delivery and performance by each of AT&T and VLT of this Agreement and the IPR Agreement, and the consummation by each of AT&T and VLT of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of AT&T and VLT, and the execution, delivery and performance of each of AT&T, VLT and their Affiliates of the Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, and the consummation of the transactions contemplated thereby, will, prior to such execution and delivery, be duly authorized by all necessary corporate, partnership or limited liability company action on the part of AT&T, VLT or such Affiliates, and no other corporate, partnership or limited liability company proceedings or actions on the part of any of AT&T, VLT or such Affiliates, or their respective boards of directors or other governing bodies or stockholders, partners or members are necessary therefor. This Agreement and the IPR Agreement have been, and the Transaction Agreements and the Local Purchase Agreements to be executed by AT&T, VLT and their Affiliates on or prior to the Closing will, when executed and delivered, be, duly executed and delivered by AT&T, VLT and their Affiliates, as applicable. Assuming the due execution and delivery hereof and thereof by the other parties thereto, this Agreement and the IPR Agreement constitute, and the other Transaction Agreements and the Local Purchase Agreements to be executed by AT&T, VLT or their Affiliates on or prior to the Closing will, when duly executed and delivered, constitute, legal, valid and binding obligations of AT&T, VLT and such Affiliates that are parties thereto, enforceable against it or them in accordance with their respective terms.

(c) **No Conflicts.** Except as set forth on Schedule 17.1(c), the execution, delivery and performance by each of AT&T and VLT of this Agreement and the IPR Agreement, the consummation of the transactions contemplated hereby and thereby and the compliance with the terms hereof and thereof do not, and the execution, delivery and performance by each of AT&T, VLT and their Affiliates of the other Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, the consummation of the transactions contemplated by such Transaction Agreements and such Local Purchase Agreements and compliance with the terms of such Transaction Agreements and such Local Purchase Agreements will not at the Closing, conflict with, or constitute or result in any Default under (i) any provision of the Restated Certificate of Incorporation or bylaws of AT&T, the certificate of incorporation or bylaws of VLT or any provision of the constitutive or equivalent documents of any such Affiliate, (ii) any order, arbitration award, judgment, injunction or decree against, or binding upon, any of AT&T, VLT or any such Affiliate or upon its properties or businesses, (iii) any instrument, contract, mortgage, charge or other agreement to which AT&T, VLT or any such Affiliate is a party or by which any of its Assets is bound, or (iv) under any Applicable Law with respect to AT&T, VLT or any such Affiliates or any of their respective Assets (except, with respect to clauses (ii), (iii) and (iv), for such conflicts or Defaults that, individually or in the aggregate, would not have a material effect on the ability of AT&T, VLT or any of their Affiliates, as applicable, to perform in all material respects its obligations under this Agreement and the other Transaction Agreements and Local Purchase Agreements to which it is a party in accordance with



their respective terms and would not have a Venture Business Material Adverse Effect).

(d) **Consents and Approvals.** Except as provided in Schedule 17.1(d), no Third Party Approval and no Governmental Approval is required to be obtained or made by AT&T, VLT or any of their Affiliates in connection with the execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby, except for Third Party Approvals or Governmental Approvals, the absence of which, individually or in the aggregate, would not have a material effect on the ability of any of AT&T, VLT or their Affiliates, as applicable, to perform in all material respects its obligations under this Agreement and the other Transaction Agreements to which it is a party in accordance with their respective terms and would not have a Venture Business Material Adverse Effect.

(e) **Litigation.**

(i) Except as set forth in Schedule 17.1(e), there are, as of the date hereof, no Actions pending or, to the knowledge of AT&T, threatened against AT&T or any of its Affiliates or any property of AT&T or of any such Affiliate, including Intellectual Property Rights, in any court or before any arbitrator of any kind or in or before or by any Governmental Body, except Actions which, individually or in the aggregate, are not reasonably likely to, (x) have a material adverse effect on AT&T or VLT or (y) restrain, enjoin or otherwise prevent or materially delay the consummation of the transactions contemplated hereby or by any other Transaction Agreement, in each case,

except with respect to Taxes which are the subject of separate representations and warranties.

(ii) Schedule 17.1(e) contains a list and brief description (other than with respect to any Tax matters) as of the date hereof of (x) all pending Actions against any of the AT&T Sellers relating to their conduct of the AT&T GCS Business or against any of the Contributed AT&T Subsidiaries and which individually involve an amount in excess of \$10 million, (y) all threatened Actions against any of the AT&T Sellers relating to their conduct of the AT&T GCS Business or against any of the Contributed AT&T Subsidiaries, in each case of which AT&T has knowledge and which individually involve an amount in excess of \$10 million, and (z) all writs, injunctions, orders, and decrees of any Governmental Bodies to which any of the AT&T Sellers is subject relating to their conduct of the AT&T GCS Business or against any of the Contributed AT&T Subsidiaries, in each case which would, individually or in the aggregate, have a Material Adverse Effect on the AT&T GCS Business or on the Contributed AT&T Subsidiaries taken as a whole (collectively, a "AT&T GCS Business MAE").

(iii) Except as disclosed in Schedule 17.1(e) and except with respect to Taxes and Environmental Laws (which are the subject of separate representations and warranties), there are no Actions pending or, to AT&T's knowledge, threatened against any AT&T Seller relating to the AT&T GCS Business or against any Contributed AT&T Subsidiary that would individually or in the aggregate have an AT&T GCS Business MAE or prohibit the